

RENDERED: March 27, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-1836-MR

ANGELA PROFFITT; and
CAMERON WADE PROFFITT

APPELLANTS

V. APPEAL FROM MONROE CIRCUIT COURT
HONORABLE PAUL BARRY JONES, JUDGE
ACTION NO. 95-CI-109

DARREN CLARKSON

APPELLEE

OPINION REVERSING AND REMANDING

* * * * *

BEFORE: GUDGEL, Chief Judge; BUCKINGHAM and KNOPF, Judges.

GUDGEL, CHIEF JUDGE: This is an appeal from a order entered by the Monroe Circuit Court modifying a child support order previously entered by the Monroe District Court in a paternity action. Appellants, mother and child, contend that the circuit court was not authorized to modify the district court's previous order. We are constrained to agree. Hence, we reverse and remand.

Appellant Cameron Wade Proffitt was born on August 22, 1994, to appellant Angela Proffitt and appellee Darren Clarkson. Proffitt and Clarkson have never been married. In February 1995, Clarkson filed a paternity action in the Monroe District Court.

After paternity was established through genetic testing, but prior to the district court's final adjudication of paternity, Clarkson filed a petition in the Monroe Circuit Court seeking an order awarding him visitation rights with the child. In response, Proffitt argued that the circuit court should not award visitation rights until such time as the district court entered a judgment adjudicating the issue of paternity. Clarkson subsequently renewed his motion and further requested that the court change the child's surname to Clarkson.

On November 1, 1995, an agreed order was entered which adjudged Clarkson's visitation rights. Clarkson agreed in the order to withdraw his request for a name change.

On March 14, 1996, Clarkson filed a motion in the circuit court seeking an order modifying his child support obligation at \$79.68 per week on the ground that his wages had decreased significantly. The district court had fixed Clarkson's child support in an order entered January 16, 1996. Specifically, Clarkson claimed that his support obligation should be reduced to \$194 monthly.

In response, Proffitt argued that the circuit court did not have authority to modify the district court's order and that Clarkson was required to seek such relief in the district court. The circuit court disagreed with appellants' position and proceeded to reduce Clarkson's child support obligation to \$194 per month.

On appeal, appellants contend that the circuit court did not have authority to modify the district court's previous child support order. We agree.

By virtue of KRS 406.021 and KRS 406.051, a district court has jurisdiction over paternity actions. Indeed, KRS 406.021 states in relevant part as follows:

- (2) Paternity may be determined by the District Court

- (3) If paternity has been determined or has been acknowledged according to the laws of this state, the liabilities of the father may be enforced in the same or other proceedings

Further, KRS 406.051(1) states as follows:

The District Court has jurisdiction of an action brought under this chapter and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support (Emphasis added.)

More important, KRS 406.051 was amended effective July 15, 1996, to extend to the district court concurrent jurisdiction in paternity actions over issues as to child custody and visitation which were previously reserved to the circuit court. See KRS 406.051(2). However, the legislature did not see fit to expand the circuit court's jurisdiction in paternity actions in any respect.

Claims for child support and claims for custody or visitation are separate and distinct proceedings involving

separate remedies. Gera v. Gera, Ky. App., 796 S.W.2d 13, 14 (1990). Thus, if paternity is established in a district court paternity action, that court is vested with jurisdiction to award child support in the action. KRS 406.051(1). Moreover, the power to award support necessarily includes the power to modify such an award.

Here, the district court made an award of child support in a final order entered on January 16, 1996. Rather than ask the district court to modify its order, appellee chose instead to request the circuit court to modify the order. However, under our present statutory scheme, there is no authority conferred upon circuit courts to modify support orders entered by district courts in paternity actions except to the extent that such orders are appealed from and determined by the circuit court to amount to an abuse of discretion. Indeed, any other statutory scheme would lead to inconsistent decisions and encourage forum shopping.

Further, although it is true as appellee contends that the circuit court has jurisdiction to award and modify child support in actions for legal separation and dissolution and in actions brought under the Uniform Reciprocal Enforcement of Support Act (URESA), the fact remains that the paternity statutes confer no such authority on circuit courts. Moreover, contrary to appellee's argument, merely because the circuit and district courts have concurrent jurisdiction over URESA actions is of no significance since the instant paternity action is governed by a

separate and distinct statutory scheme, and those statutes confer no concurrent jurisdiction on circuit courts over child support orders in paternity actions.

For the reasons stated, the circuit court's order is reversed and this matter remanded to the circuit court with directions to enter an order denying appellee's motion to modify his child support obligation.

ALL CONCUR.

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